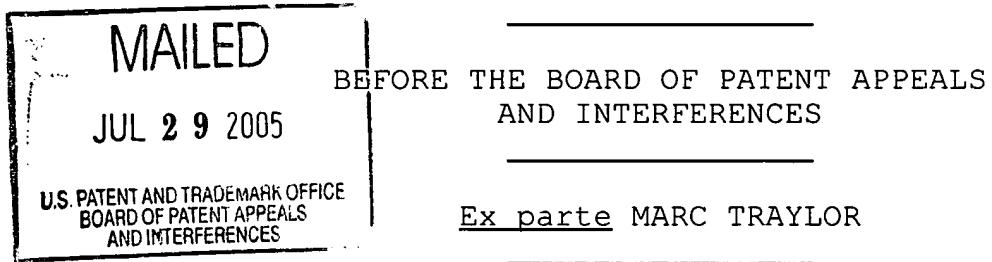


The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE



Appeal No. 2005-1393  
Application No. 09/751,609

ON BRIEF

Before KIMLIN, WALTZ and KRATZ, Administrative Patent Judges.  
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-20.

Claim 1 is illustrative:

1. A paintbrush holder comprising:

a clamp for engaging a rim of a paint can;

a magnet for engaging a ferrule of a paintbrush; and

a resilient member having a proximal portion attached to the clamp and having a distal portion attached to the magnet wherein the resilient member has a force constant selected to produce a displacement of the distal portion when the paintbrush is subjected to a mechanical shock so that the paintbrush does not slide off the magnet.

The examiner relies upon the following reference as evidence of obviousness:

Nagy 3,729,158 Apr. 24, 1973

Appellant's claimed invention is directed to a paintbrush holder comprising a magnet that engages a ferrule of the paintbrush. The holder also comprises a resilient member having a proximal portion attached to a clamp which engages the paint can, and a distal portion that is attached to the magnet. The resilient member possesses a force constant which produces displacement of its distal portion when the paintbrush is subjected to mechanical shock such that the brush does not slide off the magnet.

Appealed claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagy.

Appellant submits that the appealed claims "do not stand or fall together" (page 4 of principal brief, first paragraph). However, only claim 14, and claims 10, 17 and 20 as a group, are separately argued by appellant. Accordingly, claims 1-9, 11-13, 15, 16 and 18-20 stand or fall together, as do claims 10, 17 and 20.

We have thoroughly reviewed each of appellant's arguments set forth in the principal and reply briefs on appeal. However,

we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Inasmuch as we fully concur with the examiner's reasoned analysis and application of the prior art, as well as his cogent disposition of the arguments raised by appellant, we will adopt the examiner's reasoning as our own in sustaining the rejection of record.

As explained by the examiner, Nagy, like appellant, discloses a paintbrush holder comprising a clamp for engaging the rim of a paint can, a magnet for engaging a ferrule of a paintbrush, and a resilient member having a proximal portion attached to the clamp and a distal portion attached to the magnet. Appellant contends that vertical leg 24 of Nagy is rigid and not resilient, as presently claimed. However, as noted by the examiner, Nagy expressly discloses that member 24 is "bendable" (column 1, line 52). While appellant maintains that Nagy "uses the word 'bendable' to describe the permanent deformation of the flat-faced metal strap from a straight line into an L-shape" (page 2 of Reply Brief, first paragraph), there is no factual support for such interpretation of the word "bendable" used by Nagy. Contrary to appellant's argument, we

are persuaded that Figure 2 of Nagy depicts member 24 as bendable and resilient under an applied force.

Appellant also contends that leg 24 of Nagy does not have the claimed "force constant selected to produce a displacement of the distal portion when the paintbrush is subjected to a mechanical shock so that the paintbrush does not slide off the magnet" (claim 1). We agree with the examiner, however, that it is reasonable to conclude that bendable leg 24 of Nagy inherently possesses such a force constant. It is significant, and apparently not appreciated by appellant, that the appealed claims are drafted in broad language which specifies no magnitude for the force constant, displacement and mechanical shock. Consequently, since the appealed claims encompass an unlimited range of magnitudes for the force constant, displacement and mechanical shock, and we agree with the examiner that bendable leg 24 of Nagy has some force constant which produces a displacement of the distal portion when subjected to some mechanical shock, we find that the claim language does not serve to distinguish the claimed resilient member from leg 24 of Nagy. Although appellant submits that most of the force between the paintbrush and can of Nagy would be transformed into compression or tension in leg 24, and would not result in a significant

displacement of the distal portion of leg 24, all that is required is that leg 24 of Nagy experience some, or any, displacement when subjected to any mechanical shock to meet the claimed invention.

As for separately argued claim 14, appellant has not addressed the examiner's finding that member 46 is a magnet holder, and that member 46, together with leg 24 and a portion of the clamp as 28, 30 and 32, all constitute a single molded structure (see page 10 of Answer).

Concerning the recitation in claim 10 that "the resilient member limits acceleration of the paintbrush to no more than 0.75 g," we agree with the examiner that it would have been a matter of obviousness for one of ordinary skill in the art to determine the design of the resilient member which optimizes the acceleration of the paintbrush. In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980).

As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

*Edward C. Kimlin*

EDWARD C. KIMLIN )  
Administrative Patent Judge )  
 )  
 )

*Thomas A. Waltz*

THOMAS A. WALTZ ) BOARD OF PATENT  
Administrative Patent Judge ) APPEALS AND  
 ) INTERFERENCES  
 )

*Peter F. Kratz*

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